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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 MATTHEW G. SILVA,
12 Plaintiff,
13 v.
14 C. J. MERRITT, *et al.*,
15 Defendants.

Case No. C07-5482BHS/KLS
ORDER TO SHOW CAUSE WHY
CASE SHOULD NOT BE
DISMISSED UNDER 28 U.S.C. §
1915 (g)

17 This matter comes before the Court on Plaintiff's application to proceed *in forma pauperis* and a
18 proposed civil rights complaint under 42 U.S.C. § 1983. (Dkt. # 1). Court records indicate, however,
19 that Plaintiff has filed at least three civil actions *in forma pauperis* in the United States District Courts
20 that have been dismissed as frivolous or for failure to state a claim. Those cases include: *Silva v. Bush, et.*
21 *al*, CV-06-984-JLR (Western District of Washington); *Silva v. Clarke, et.al.*, CV-05-414-MWL (Eastern
22 District of Washington); and *Silva v. State of Washington, et al.*, C-98-659-WLD (Western District of
23 Washington).¹

24 In addition, Plaintiff has filed a fourth action, CV-06-2289-JAT/ECV, in the District of Arizona
25 (Phoenix), which was dismissed for failure to state a claim. And, in a fifth action filed in the Eastern
26 District of Washington, Case No. CV-7-210-RHW, Plaintiff has been ordered to show cause why that

28 ¹The Court may take judicial notice of court records. *MGIC Indemn. Corp. v. Weisman*, 803 F.2d 500,
504 (9th Cir. 1986).

1 action should not be dismissed under 28 U.S.C. § 1915 (g). Plaintiff responded to Judge Whaley's order
2 to show cause in that case, stating only that the fourth action he filed in the District of Arizona is on
3 appeal and should not be counted against him. (Dkt. # 7).

4 Regardless of the status of Plaintiff's fourth and fifth cases, Section 1915 (g) of the United States
5 Code applies if a prisoner has brought three or more actions previously dismissed as frivolous, malicious
6 or that failed to state a claim:

7 In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or
8 proceed under this section if the prisoner has, on *3 or more prior occasions*, while
9 incarcerated or detained in any facility, brought an action or appeal in a court of the United
States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a
claim on which relief may be granted unless the prisoner is under imminent danger of
serious physical injury.

10 [Emphasis added.]
11

12 **ACCORDINGLY, IT IS ORDERED:**

- 13 (1) Plaintiff shall show cause by **November 16, 2007**, why this case should not be dismissed
14 pursuant to 28 U.S.C. § 1915 (g). In the alternative, Plaintiff may pay the full \$350.00
15 filing fee for this action. **If the Plaintiff does not respond within the time period
16 specified, or Plaintiff does not show sufficient cause as noted above, the Court will
17 recommend dismissal of this case pursuant to 28 U.S.C. § 1915 (g); and;**
- 18 (2) The Clerk is directed to send a copy of this Order to Plaintiff.
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20 DATED this 17th day of October, 2007.
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24 Karen L. Strombom
United States Magistrate Judge
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